

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 22-1295V

UNPUBLISHED

CYNTHIA STOCKER,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: February 4, 2025

Mark T. Sadaka, Law Offices of Sadaka Associates, LLC, Englewood, NJ, for Petitioner.

Heather L. Pearlman, U.S. Department of Justice, Washington, DC, for Respondent.

DECISION¹

On September 14, 2022, Cynthia Stocker filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa—10 through 34² (the “Vaccine Act”). Petitioner alleged that she suffered sensorineural hearing loss, vertigo, and labyrinthitis from several vaccines she received on September 16, 2019. ECF No. 1. Due to Petitioner’s failure to prosecute her claim, this case is **DISMISSED**.

Relevant Procedural History

On September 15, 2022, the PAR Initial Order issued requiring Petitioner to file medical records and other statutorily required supporting documentation. ECF No. 5. On October 17, 2022, Petitioner filed some medical records. ECF No. 6. Soon thereafter, in a motion for extension of time filed on December 16, 2022, Petitioner’s counsel stated that he had been unable to reach Petitioner. ECF No. 8. Petitioner was granted additional time to file the outstanding documents required by the PAR Initial Order.

Nearly two years later, Petitioner’s counsel continued requesting extensions of time citing an ongoing inability to contact Petitioner, mostly recent in a motion filed on September 27, 2024. ECF No. 21. No additional supporting documentation has been filed since 2022.

¹ Because this Decision contains a reasoned explanation for the action taken in this case, it must be made publicly accessible and will be posted on the United States Court of Federal Claims’ website, and/or at <https://www.govinfo.gov/app/collection/uscourts/national/cofc>, in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2018) (Federal Management and Promotion of Electronic Government Services). **This means the Decision will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), Petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all “§” references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

On December 4, 2024, I issued an Order to Show Cause why this case should not be dismissed for failure to prosecute. ECF No. 22. On January 3, 2025, counsel filed evidence that the Order to Show Cause had been served on Petitioner by certified mail and that Petitioner had signed for the certified mail. ECF No. 23. In a filing submitted on February 3, 2025, counsel detailed additional efforts made to contact Petitioner but stated that Petitioner continued to be unresponsive. ECF No. 24.

Grounds for Dismissal

It is a petitioner's obligation to follow and respond to orders issued by a special master in a case. The failure to do so – whether on account of attorney error, inaction, or because a petitioner has failed to stay in contact and/or communicate with counsel - is grounds for the claim's dismissal. *Padmanabhan v. Sec'y of Health & Human Servs.*, 638 Fed. App'x 1013 (Fed. Cir. 2016); *Tsekouras v. Sec'y of Health & Human Servs.*, 26 Cl. Ct. 439 (1992), *aff'd*, 991 F.2d 810 (Fed. Cir. 1993) (per curiam), (“[c]ontrolling precedent considers dismissal appropriate when failure to act is deemed willful, when it is in violation of court orders, when it is repeated, and when clear warning is given that the sanction will be imposed”); *Sapharas v. Sec'y of Health & Human Servs.*, 35 Fed. Cl. 503 (1996) (“[n]ot only did petitioner fail to meet the court's . . . deadline, but he also ignored the chief special master's ‘warning’ order, clearly placing petitioner on notice that failure to respond to the court's order . . . , would result in dismissal of the claim. The chief special master clearly did not abuse his discretion in dismissing this case for failure to prosecute”); see also Vaccine Rule 21(b) (“[t]he special master or the court may dismiss a petition or any claim therein for failure of the petitioner to prosecute or comply with these rules or any order of the special master or the court.”).

Petitioner was specifically advised in the December 4, 2024 Order to Show Cause that failure to follow orders issued in this matter (and failure to communicate with her counsel which prevents compliance with those order) risked dismissal of the claim. As noted in the response to the Order to Show Cause, Petitioner has been out-of-touch with her counsel since at least December 2022. Because Petitioner has continued to disregard my orders, without justification or explanation, dismissal is now appropriate.

Accordingly, this case is DISMISSED for failure to prosecute. The clerk shall enter judgment accordingly.³

IT IS SO ORDERED.

s/Brian H. Corcoran
 Brian H. Corcoran
 Chief Special Master

³ If Petitioner wishes to bring a civil action, he must file a notice of election rejecting the judgment pursuant to § 21(a) “not later than 90 days after the date of the court's final judgment.”